

**EXHIBIT “5”**

**THE PRIVATE SECTOR AND GOVERNMENT  
RESPONSE TO THE MORTGAGE  
FORECLOSURE CRISIS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON FINANCIAL SERVICES**  
**U.S. HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED ELEVENTH CONGRESS**  
**FIRST SESSION**

**DECEMBER 8, 2009**

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TESTIMONY OF  
JACK SCHAKETT  
CREDIT LOSS MITIGATION STRATEGIES EXECUTIVE  
BANK OF AMERICA HOME LOANS  
Before the  
HOUSE FINANCIAL SERVICES COMMITTEE  
WASHINGTON, DC  
DECEMBER 8, 2009

Chairman Frank, Ranking Member Bachus, and Members of the Committee, thank you for the opportunity to update you on Bank of America's loan modification efforts and to discuss areas where we can work together to help more borrowers stay in their homes.

I am Jack Schakett, Bank of America's Credit Loss Mitigation Strategies Executive. I report to Bank of America Home Loans President, Barbara Desoer, and have responsibility for foreclosure prevention programs for a mortgage servicing portfolio of nearly 14 million loans.

#### **Bank of America Making Home Affordable Performance**

Bank of America is proud to be a partner in the Administration's Making Home Affordable program. Under the Home Affordable Refinance Program (HARP), Bank of America is the industry leader – providing refinancing through this process to more than 100,000 customers. And leveraging the Home Affordable Modification Program (HAMP), we now have more than 160,000 customers enrolled in a trial modification – leading the industry, as of October, in the number of active trials and offers extended. This record demonstrates our strong commitment to the program's success and to Treasury's leadership.

HAMP is the first loan modification solution we consider for borrowers who meet the initial eligibility requirements for the program. HAMP has proven a valuable tool that complements the aggressive loan modification programs we already had in place. Over the last two years, our own loan modification efforts have helped an additional 450,000 Bank of America customers. Combined with the HAMP program, these efforts have helped nearly 615,000 homeowners.

Importantly, Bank of America is not proceeding with foreclosure sales for customers who may be eligible for a modification under HAMP or our other modification programs and with whom we have been able to establish contact. Those holds remain in place during the time that it takes us to evaluate the borrower and through the trial modification period.

None of this is to say that there have not been problems. In over 100,000 calls a day, we hear from customers - their concerns and frustrations. We believe we have improved significantly our ability to handle the large volumes associated with these programs and are focused on constant enhancements. These are difficult times for customers and our intent is to make this as easy and understandable for them as we can.

As the largest servicer in America, we applaud the U.S. Treasury's continued efforts to ensure the success of these important programs and their determination to work as partners to achieve our common goal of keeping people in their homes.

Today, I'd like to discuss with the Committee two areas where we have gaps to close, and where we have the opportunity to make adjustments that will enable servicers to assist even more distressed homeowners.

First, a status report on the conversion of trial modifications to permanent. And second, a discussion of our HAMP progress overall and recommended enhancements to the program to help more borrowers.

**Trial to Permanent Modification Conversion Status and Challenges**

On Monday, December 7, Bank of America participated in the Servicer CEO Summit hosted by U.S. Treasury Secretary Timothy Geithner. We fully share Treasury's commitment to convert successful trial modifications to permanent as quickly as possible.

In support of that commitment, Bank of America is focusing on assisting customers to collect and provide all the documents and information required for the underwriting necessary for a successful conversion. Otherwise, homeowners are at risk of missing this opportunity to obtain a HAMP loan modification, an outcome none of us want.

As this committee knows from prior hearings, in addition to customers making three timely trial payments, the servicer must fully underwrite the permanent modification by obtaining all required documentation. This includes verifying income, occupancy status, and tax returns. The single biggest obstacle to a quick and successful conversion is obtaining the required financial information to underwrite the permanent modification. When borrowers originally entered their trial modifications they were not required to provide all the documents necessary for approval of a permanent modification. They were told that in order to qualify for a permanent modification they must provide all such documents during the trial period.

Bank of America has approximately 65,000 customers who have made more than three trial modification payments on time and their modifications are set to expire on December 31, 2009. Unfortunately, of those customers, 50,000 have either not submitted some or all of the required documents or have submitted all their required documents, but the documents reveal discrepancies that require an additional response from the customer. It is unclear why this has happened to such a high degree; however, several factors likely contributed to this, including ineffective communications with customers, shortcomings in document maintenance, misunderstandings about program requirements, and the inability to comply by some borrowers.

Our focus now is to make sure that every customer who has successfully made three or more trial modifications payments understands their document obligations and has an effective method for completing all the necessary requirements.

For these customers, Bank of America last week sent by express mail an urgent request for the documents needed to complete the process and the time frame required to avoid losing the Treasury's modification program benefits. We included a return prepaid express mail envelope to make the process as easy and expeditious as possible. We choose written communication and express mail packages to reduce the risk of misunderstanding, lost faxes or other issues associated with document collection, a part of the process that has been a source of customer frustration and where we have worked hard to improve.

While we manage extraordinary volume, we are doing everything we can to ensure optimal efficiency of all document control and management. Bank of America launched fax-to-image technology employed solely for the HAMP program. Once we obtain the documentation, we have the necessary staffing to complete the review and process the permanent conversion, and we will continue to add capacity as needed.

We will repeat the express mail notification again next week for any customers who still lack completed documentation and are also looking at ways we can partner with housing counselors to work face-to-face with customers to help them through the document submission process.

For the 15,000 customers who have provided all required information, we are experiencing a high conversion rate, with denials predominantly resulting from either income differences from what was stated by the borrower at the time of trial modification or discovery that the property is no longer owner-occupied, a requirement of the program.

We applaud the announcement by Treasury last week to partner with servicers to help heighten awareness of the need to promptly follow through with submitting documentation and to make it a priority to meet with the notary to sign the final loan modification agreement.

Consistent with these efforts, Bank of America is maintaining the same sense of urgency. By the time our trial modification participants reach their HAMP expiration date, Bank of America will have made about ten reminder phone calls and sent – at least twice – a summary of required documents and a postage-paid express mail package through which they can return their documents. This is in addition to the original trial modification mailing we send customers when they enter the program.

We have dedicated substantial resources to these efforts including the expansion of our default management staffing to nearly 13,000. We have also employed representatives of Bank of America in key markets to attempt face-to-face outreach to customers who have failed to send in required documents, and we have moved hundreds of mortgage loan officers over to servicing to assist in helping customers convert to permanent modifications. In many instances, we employ “mobile” notaries so customers can sign the documents at a time and place of their choosing to remove some potential confusion and to make sure it is done in sufficient time. We also are placing advertising in major markets with a high density of customers in active trial modifications, encouraging them to be responsive to our attempts to help them sustain homeownership.

We have increased our other customer outreach efforts as well. Since January of this year, Bank of America has participated in more than 215 community outreach events to assist distressed borrowers in 30 states. We also have partnered with three national nonprofits, the National Council of La Raza, the National Urban League, and the National Coalition for the Asian Pacific American Community, in the creation of the Alliance for Stabilizing Communities. We provided funding in support of this national coalition and its work to hold 40 housing rescue fairs over the next two years in 24 communities hardest hit by the foreclosure crisis.

In September, we launched a Bank of America Home Loans Assistance website to provide our customers easy online access to gain answers to their questions about the loan modification process – <http://homeloans.bankofamerica.com/homeloanhelp>.

Despite these efforts, it is clear that some portion of our 65,000 customers who are facing a December 31 deadline will be unable to complete the process, get the documents signed and notarized and return the required information by the deadline. Having some way to

accommodate these customers within the HAMP program would be helpful, given they were able to achieve substantial compliance with the requirements.

Customers who narrowly miss the deadline will fall into two primary groups:

- Customers that as of December 31, will have all their documentation in and the conversions are set, but they have not signed the final modification document (notary and customer have not met) but will do so shortly after the deadline.
- And, customers that as of December 31, will have all their documentation in, but we are still working with them on issues identified in the underwriting process, and again the final modification documents will be signed shortly after the deadline.

A third group of customers we believe should be considered for special consideration are those who made all of their trial payments but did not make the last payment "timely" as defined by program guidelines, but today are current and all other documentation issues are resolved.

Bank of America is working with Treasury to include these customers within the HAMP program with the same benefits they otherwise would receive. If that is not possible, Bank of America will still attempt to provide these customers with the same affordable payment and modification terms they would have received under HAMP, but through our own programs. The only difference for the customer will be the loss of the annual performance payments the government provides for the first five years.

#### **Overall Success of HAMP**

In addition to the focus on permanent conversions, we would like to improve the overall effectiveness of HAMP by offering for consideration areas where the program could be enhanced to help more customers.

Our most recent data provided to Treasury indicates approximately 600,000 customers are potentially eligible for the HAMP program. This population does not include borrowers we have determined do not qualify for HAMP such as where the home is no longer owner occupied

Of those potentially eligible, we have made trial offers to 252,000 customers – nearly half. Of those to whom we have extended offers, 160,000 – or 63% - have started a trial modification by making their first payment. As we continue to pursue all methods of contact, we are hopeful these strong results will improve even further.

As these numbers demonstrate, HAMP has been largely successful in meeting its designed objective, which has been to assist owner-occupied borrowers who have experienced a hardship, or an increase in their loan payment, resulting in an unaffordable monthly housing payment exceeding 31% of their monthly income, and who, with help, can maintain ownership and occupancy of their homes.

However, the program was not designed to assist borrowers who have vacated their home or no longer occupy the home as their principal residence. Nor was the program structured to assist

the unemployed or those who already have a relatively affordable housing payment of less than 31% of their income. Out of our HAMP eligible population, as recently defined by Treasury, of the customers we've talked with, 55% are known to fall into one of these four categories.

These figures represent the depth of the nation's recessionary impacts on homeowners, not the failure of the government program or the efforts of participating mortgage servicers.

Bank of America believes it is necessary to provide solutions to these customer segments that fall outside HAMP's target reach – and we are doing so. We have non-HAMP options we consider to avoid foreclosure including modification programs for non-owners and borrowers with a debt-to-income ratio below 31%, and importantly, forbearance programs for the unemployed.

We also are working with Treasury to expand HAMP to assist in meeting these same challenges - specifically including a program for the unemployed and allowance for a housing ratio less than 31% for low-to-moderate income borrowers.

The benefit of having Treasury take the lead to address these challenges is creating an industry standard that helps all customers and provides investor incentive to help more borrowers qualify. In any case, Bank of America will continue to provide solutions to these customers.

Our goal is to keep as many customers in their homes as possible. We will exhaust every available option, including short sales and deeds in lieu, when a homeowner chooses to sell their property or has no other option except foreclosure. We appreciate Treasury's recently released final guidance on short sales and are pleased to say we have already adopted many of the principles outlined.

### Conclusion

At Bank of America, we continue to look critically at the loan modification process, and we are listening to customers, community partners, and other stakeholders about how we can improve. We understand the urgency to offer solutions – not only for the customers we serve – but to further encourage the housing recovery that has begun to take root.

We will continue to pursue transformative initiatives that increase the number of customers receiving assistance, enhance the sustainability of the loans and improve the experience for customers throughout the process.

We appreciate the continued strong support and partnership from the Administration and Congress to reach the goal we all share to help as many of the individuals and families we serve stay in their homes.

Thank you, and I would be happy to answer any questions.